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December 29, 2000

**RECEIVED**

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**VIA HAND DELIVERY**

Dorothy Attwood, Chief  
Common Carrier Bureau  
Federal Communications Commission  
445 Twelfth Street, SW  
Washington, DC 20554

**Re: Moultrie Independent Telephone Company; NECA  
Requiring Company to Adopt Inaccurate Cost Study**

Dear Ms. Attwood:

This letter is a follow up to you and the members of your staff following the meeting on December 1, 2000, with representatives of Moultrie Independent Telephone Company ("Moultrie"). At the meeting, you, Carol Matthey, Sharon Webber, Jack Zinman and Robert Loube discussed with Steve Bowers, Loretta Garcia and the undersigned counsel a long-running dispute between Moultrie and the National Exchange Carrier Association ("NECA"). This letter memorializes additional information provided at the meeting with regard to the benefit of the subject transaction helping to keep Moultrie's local rates affordable with minimal impact on the universal service fund.

As you know, NECA requires each of its members to submit a cost study every year for the purposes of developing the national Carrier Common Line ("CCL") pool rate for the members in that pool, and for developing company-specific universal service explicit subsidies for those members whose costs exceed the national average by 115% or more. NECA has rejected

Moultrie's cost studies for 1997, 1998 and 1999. Instead, NECA is continuing to use Moultrie's 1996 cost study as the basis for the calculations of Moultrie's carrier common line and universal service fund amounts for 1997, 1998 and 1999. This has been and continues to be prejudicial to Moultrie and its small base of rate payers.

Moultrie serves a 39-square-mile territory in and around rural Lovington, Illinois. It serves 853 access lines from a single telephone exchange office. As discussed in our meeting, after reviewing the Telecommunications Act of 1996 and subsequent FCC rulings, Moultrie determined that it would be in the best interest of Moultrie's rural ratepayers to reduce the company's investment in non-telecommunications assets. The transfer of assets effective 1997 was intended, in part, to hold customer rates at a reasonable level for the future, rather than increasing rates. This was necessary especially in light of the fact that the Dial Equipment Minutes ("DEM") weighting had not yet been terminated. Moultrie's basic access unit rate is currently \$23.79 per month which includes all state and federal mandated charges.<sup>1</sup> This rate does not include advanced services or features; these customers receive only local dial-tone and local calling capabilities, plus call waiting, which is not considered an advanced service.

It is relevant that Moultrie has been able to hold the line on its local service rates for five years, due to Illinois' requirement that intrastate access charges mirror interstate access charges, which contained the three times DEM weighting factor, a practice which was established by the FCC after the Illinois commission had ruled on mirrored tariffs. Illinois did, however, phase out a state carrier common line (CCL) charge during the period 1/1/84 through 1/1/90, using a phase-in approach to establish a state end user common line (EUCL) charge. This phased-in EUCL charge resulted in Moultrie's customers having their local service costs rise by \$12.45 over the six years and one day of the phase-in. Illinois subsequently has no state CCL. More to the point, the \$12.45 is a cap.

Due to the typically small population of local exchange customers that a small rural exchange company's subscribers are able to call without incurring toll charges, and to the substantial level of access revenues previously experienced, Moultrie's management decided to reduce its state EUCL charge in two steps, in 5/1/92 and 4/1/93, each time by \$1.13, an amount equal to each of the last five phase-in increases of \$1.13, resulting in an EUCL charge of \$10.19 (\$12.45 - \$1.13 - \$1.13) from 4/1/93 to the present. Moultrie has filed to reinstate the full \$12.45 EUCL charge effective with its 2/1/01 billing.

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<sup>1</sup> That rate will increase to \$26.05 per month beginning in February to account for the reinstatement of a foregone portion of an intrastate end user common line charge.

When the three times DEM weighting factor was removed as a result of FCC action after the '96 Telecommunications Act, the Illinois Commission established a state DEM weighting fund for Illinois small ILECs to replace the state access revenues lost because of the Illinois tariff mirroring requirement, much as did the FCC with the federal fund. Illinois has not rescinded that tariff mirroring requirement. Since establishing that fund, the Illinois commission has twice reduced the amount of the fund, by seven percent each time. The first reduction was two years ago, at which time Moultrie voluntarily gave up \$100,000 of the total fund's seven percent reduction. The reduction recently ordered, to be effective for 2001, will see each small company in Illinois have its pro rata share of the DEM weighting fund allocation reduced by another seven percent. The company will have to file an additional local rate increase to offset that reduction.

Moultrie Independent Telephone Company currently employs four people. It has to add another semi-professional person in January, 2001. The cost of adding employees is becoming increasingly prohibitive due to the associated overheads. The volume of work directly attributable to the increase in regulatory requirements since the '96 Telecom Act has caused a significant increase in the amount of costs associated with compensating the consulting, legal and service agencies necessary to meet these regulatory requirements.

Returning to the subject at hand, the transfer of non-operating assets to an affiliate allowed Moultrie to shift its operations to a cost structure more closely resembling that of the emerging competitive telecommunications companies with which Moultrie now competes. Since 1996, Moultrie increasingly finds itself competing with wireless carriers which typically operate with a unregulated cost structure than Moultrie. A competing carrier's rates may be lower than Moultrie's because the carrier has a lower base of costs to cover in its customer rates, not because it operates more efficiently than Moultrie. The wireless carrier, by virtue of its wireless design, does not have the plant costs of a wireline facilities-based carrier such as Moultrie. Thus, a wireless carrier is able to recoup its costs more quickly than a wireline carrier. Furthermore, not only is Moultrie facing increased competition for customers and revenue, it can be required to modify its network to accommodate competition and to respond to government requirements for network reliability and interoperability.

Due to the isolated location of Moultrie's service territory and its long-term understanding of the economics of its region, Moultrie concluded that it would not be able to find a disinterested third party to purchase the assets. Also, in order to protect the quality and integrity of its customers' services, Moultrie made the business decision to sell its non-operating assets to an entity that possessed the requisite knowledge to properly maintain them. Therefore, it transferred its buildings and certain motor vehicles to an existing affiliate that provides resale long distance

communications services. Notably, it is accepted that had Moultrie been able to transfer the subject assets to a third-party, NECA would have regularly and routinely accepted its cost studies. However, Moultrie did not have this choice and availed itself of the FCC's rules governing transactions with affiliates -- its only viable choice.

1997 was the first year that Moultrie's annual cost study contained records of transactions with an affiliate because that was the year in which the assets were sold and leased back to the telephone company. NECA rejected the 1997 cost study, and later rejected the 1998 and 1999 cost studies, claiming that the studies were not prepared in accordance with the Commission's separations rules regarding transactions with affiliates as contained in section 36.2 of the Commission's rules.<sup>2</sup> NECA asserted that section 36.2 requires that Moultrie's cost studies must continue to include assets that had lawfully been transferred to an affiliate, as if the transfer had not occurred, and to exclude the rents paid to the affiliate, as if they had not been paid; although by doing so, Moultrie's cost studies would become materially false, fictitious and fraudulent. NECA relied on section 36.2(c)(2), which requires a carrier making accounting separations to include in the carrier's accounts assets transferred to an affiliate and to exclude rents for assets rented from an affiliate.<sup>3</sup>

NECA's rejection of Moultrie's cost studies also ignores Section 32.27 of the rules, which requires a carrier to record accurately assets transferred to an affiliate in the carrier's books of account (*i.e.*, exclude leased assets and include rents paid).<sup>4</sup> The cost studies submitted by Moultrie accurately reflect Moultrie's transfer of the non-network property to the long-distance affiliate, and its leasing of the property from the affiliate. Thus, Moultrie's cost studies are in accordance with Part 32 of the Commission's rules.<sup>5</sup> As indicated during the meeting, Moultrie

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<sup>2</sup> Memorandum from Roberta Alvir, NECA, to Larry Van Ruler, Independent Telecommunications Consultants, Inc. (ITCs); Steve Bowers, Moultrie; and John Boehm, NECA, dated March 12, 1999.

<sup>3</sup> 47 C.F.R. § 36.2(c)(2).

<sup>4</sup> 47 C.F.R. § 32.27. The lease of buildings and equipment is not uncommon among telephone companies, whether they be incumbents or newly-formed entities.

<sup>5</sup> Moultrie has concerns about NECA's demand that Moultrie certify to the use of the 1996 cost study for subsequent years. The 1996 cost study cannot accurately reflect the circumstances in 1997, 1998 and 1999 because NECA is insisting that FCC rule 36.2(c)(2) requires the reversal of the transfer-and-lease transaction for purposes of the study. Moultrie, therefore, cannot sign such a certification for NECA because to do so would constitute criminal fraud under federal law and could subject the principals of Moultrie to criminal penalties or other sanctions, including imprisonment. Section 1001 of Title 18 of the US Code states that, in submissions to the US government, whoever "knowingly and willfully ... makes or uses any false writing or document knowing the same to contain any materially

believes it cannot accede to NECA's demand that Moultrie submit and certify materially inaccurate cost data.

Moultrie requests that the Commission direct NECA to accept the 1997, 1998 and 1999 cost studies submitted by Moultrie which accurately reflect the transfer of assets in Moultrie's books of account.<sup>6</sup> Moultrie also requests that the Commission direct NECA to reinstate Moultrie's settlements using the accurate 1997, 1998 and 1999 cost studies.<sup>7</sup> To that end, the Commission will need to direct NECA to re-open the 24-month window that it has established for its members to make adjustments to cost studies. NECA's contractual relationship with its members provides that all cost data submitted to NECA will be final and binding on all members 24 months after submission.<sup>8</sup> The Commission has the authority to direct NECA's actions. Under the circumstances presented by Moultrie, it is both necessary and proper for the FCC to direct NECA to re-open the 24 month adjustment window, accept Moultrie's cost studies at issue and for the future.

Moultrie is now in receipt of a letter from the Universal Service Administrative Company (USAC) stating that it has been authorized by its Board of Directors to suspend all High Cost Loop and Local Switching Support universal service payments to Moultrie effective January 1, 2001 because it can no longer rely on data submitted by Moultrie. However, if directed by the FCC, USAC will make necessary adjustments to Moultrie's payments. Accordingly, Moultrie submits herewith as an attachment to this letter a copy of USAC's correspondence to Moultrie to be considered in conjunction with the resolution of the instant matter. Moultrie specifically requests that should the Commission grant the relief it has requested vis-a-vis NECA, that the Commission also direct USAC to make payment to Moultrie as is appropriate.

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false, fictitious or fraudulent statement or entry, shall be fined under [title 18] or imprisoned not more than 5 years, or both." 18 U.S.C. §1001(a)(3).

<sup>6</sup> Moultrie has informed NECA that it will continue to dispute the adjusted receipts until such time as Moultrie obtains a ruling from the Commission. Alternatively, should the Commission determine that there is no liability to Moultrie under Title 18, Moultrie specifically requests precedent and citation of law to the effect that it is not subject to any such liability.


<sup>7</sup> Significantly, NECA has stated: "NECA will, of course, comply with the FCC's decision in this matter, including retroactive restoration of settlements in the event that Moultrie requests such relief and the FCC order expressly directs NECA to do so." Letter from Richard Askoff, NECA, to David Irwin, Irwin Campbell & Tannenwald, PC, dated March 30, 1999.

<sup>8</sup> *MTS and WATS Market Structure: Average Schedule Companies*, Memorandum Opinion and Order, 6 FCC Rcd 6608, n.45 (1991).

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A determination as Moultrie requests would be in the public interest. The sale of assets was effected in the interest of maintaining future affordable rates for Moultrie's rural customer base. Providing the requested relief for Moultrie and its customers will not adversely affect the carrier common line fund or the universal service fund as a whole. Moultrie respectfully submits that the relief it seeks is limited, especially where a company has no realistic business opportunity to transfer assets to a third party and must, therefore, avail itself of the rules governing transactions with affiliates. Further, where the transaction benefits the public by maintenance of lower consumer rates and a small company becomes better positioned to compete in the future and sustain itself, relief as requested by Moultrie is patently appropriate.

Sincerely,

  
David A. Irwin

cc: Carol Matthey  
Sharon Webber  
Irene M. Flannery



**Universal Service Administrative Company**  
High Cost & Low Income Division

Irene M. Flannery  
Vice President

*[iflannery@universalservice.org](mailto:iflannery@universalservice.org)*

December 21, 2000

Steven G. Bowers  
President and General Manager  
Moultrie Independent Telephone Company  
111 State & Broadway  
P.O. Box 350  
Lovington, Illinois 61937-0350

RE: High-Cost Universal Service Payments

Dear Mr. Bowers:

This is to inform you that, effective January 1, 2001, the Universal Service Administrative Company (USAC) will be suspending a portion of Moultrie Independent Telephone Company's universal service payments. USAC is taking this action because it can no longer rely on the cost data submitted by Moultrie that provides the foundation for your company's universal service payments.

As you know, problems with Moultrie's cost data were identified in 1998. In its 1998 annual submission of universal service fund results for 1997, the National Exchange Carrier Association (NECA) identified Moultrie as having extremely high growth in loop costs and expense adjustment amounts, and indicated that an investigation of those increases was ongoing. The investigation found that, in 1997, Moultrie became involved in a sale and leaseback transaction. The result of this transaction was an increase in the study area's loop cost from approximately \$354 to \$878, and an increase in the annual support per loop from \$15 to \$433 per year. Since 1998, NECA has been overriding the data submitted by Moultrie and has used 1996 cost study information in its high cost loop reporting to USAC.

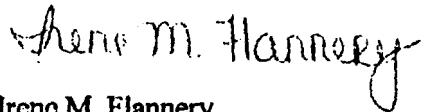
Because section 36 of the Federal Communications Commission's (FCC) rules does not specify treatment for a sale to an affiliate and leaseback arrangement for universal service purposes, NECA sought guidance from the FCC in March 1999. In August 1999, the FCC informed NECA via letter that the sale and leaseback arrangement should be transparent to the universal service calculation. Moultrie has yet to comply with the FCC's directive, and instead sought reconsideration from the FCC. NECA, in its annual

submissions of universal service data to the FCC and USAC, continues to reflect the data submitted each year by Moultrie; the support payments, however, have been limited to the pre-transaction level. NECA has requested on numerous occasions, without success, that Moultrie submit revised cost data that complies with FCC rules.

As a result, USAC can no longer rely on data submitted by Moultrie to accurately and conclusively calculate 2001 High Cost Loop and Local Switching Support payments. USAC has been authorized by its Board of Directors, therefore, to suspend all High Cost Loop and Local Switching Support universal service payments to Moultrie, effective January 1, 2001. These payments will be suspended until such time as USAC staff determines that accurate and verifiable data is submitted on which to base 2001 payments. USAC will also make any necessary adjustments to Moultrie's payments, if directed to do so by the FCC. Please note that Moultrie's Long Term Support payments will not be suspended at this time because those payments are not calculated on the basis of the unreliable data that is the subject of this letter.

Please contact me if I can be of further assistance.

Sincerely,



Irene M. Flannery  
Vice President, High Cost and Low Income Division

cc: Cheryl L. Parrino